

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JIMMY GOMEZ, SR.

Plaintiff,

v.

AMTRACK TRAIN COMPANY,
Sacramento, California,

Defendant.

NO. 3:18-CV-05147-RBL

REPORT OF SETTLEMENT
GUARDIAN AD LITEM

I. SUMMARY OF RECOMMENDATIONS

Minor's Name: Jimmy Gomez, Jr.

Date of Birth: August 15, 2014

Current Age: six (6) years

Gross Settlement: \$17,000.00

Net to Minor: \$15,000.00 (purchase
price) annuity payable at age 18

Special Issues: \$2,000.00 of gross settlement to father, Jimmy Gomez, Sr.
All subrogation expenses and GAL fees paid by Amtrak

Minor's Attorney:

Pro Se

Defendant's Attorneys:

Tim D. Wackerbarth

Andrew G. Yates

Lane Powell, PC

Phone: (206) 223-7000

Settlement Guardian ad Litem:

Robin H. Balsam

REPORT OF SETTLEMENT GUARDIAN AD
LITEM - 1

ROBIN H. BALSAM P.S.

Attorneys at Law

911 South I Street

Tacoma, Washington 98405

(253) 627-7800 / Fax (253) 572-0912

1 Mediator: none

2 Proposed Disposition of Net Proceeds: structured settlement payable to
3 minor beginning at age eighteen

4 Any Other Jurisdiction: This matter has not been submitted for approval in
5 any other jurisdiction.

6 II. APPOINTMENT

7 1.1. Name of Minor: Jimmy Gomez, Jr.

8 1.2. Minor's Date of Birth: August 15, 2014

9 1.3. Name of Settlement Guardian ad Litem: Robin H. Balsam

10 1.4. Date of Appointment: September 4, 2019

11 1.5. Date SGAL began working on this matter: December 17, 2019

12 1.6. Brief statement of experience and qualifications: Attorney Robin

13 H. Balsam has been in private practice since 1984 and has focused on the
14 area of guardianship and elder law since the late 1980s. Since 1993, her
15 practice has emphasized guardianship, trust, probate, and representing
16 families with special needs, and she obtained an LL.M Masters in Elder Law
17 from Stetson University School of Law in 2013. Ms. Balsam handles complex
18 guardianship, trust, and probate problems, represents fiduciaries in various
19 roles, and engages in many aspects of personal injury settlement trust work.

20 1.7. Relationship, if any, to involved parents, guardians, insurers or
21 attorneys: None.

22 1.8. Any felony charges that were brought against SGAL: None.

23 1.9. Any WSBA claims ever brought against the SGAL: None.
24
25

1 III. FACTUAL DESCRIPTION OF INCIDENT AND LEGAL CLAIMS

2 Plaintiff Jimmy Gomez, Sr. and his three sons were traveling from
3 Sacramento, California to Tacoma, Washington on an Amtrak train starting
4 on January 1, 2018. On January 2, 2018, after a brief stop in Cowlitz
5 County, Washington, the train negotiated a corner and lurched side to side.
6 Jimmy Gomez, Jr., then three years old, was seated in an aisle seat behind
7 his father. Jimmy Jr. was thrown out of the seat and struck his head on a
8 hook-shaped metal object that lacerated his head. The metal object is a
9 pedal release that allows for the seat to be removed from the train car (see
10 **Exhibit "A"** photograph of the seat and pedal assembly).

11 Jimmy Jr. hit the top of his head on the pedal, losing consciousness for
12 a few seconds and sustaining a two-inch cut on his head that bled profusely.
13 Due to his injury, the train was stopped again, an ambulance crew was
14 called, and Jimmy was evaluated and bandaged. Stitches were not required.
15 Jimmy Gomez, Sr. and the children did not exit the train after the incident
16 and the train continued to its destination of Tacoma, Pierce County,
17 Washington.

18 When Jimmy Gomez, Sr. and his children arrived in Washington they
19 homeless and did not have access to routine medical care. Jimmy Jr.'s injury
20 was treated by Jimmy Sr. with liquid bandage to protect the cut while
21 healing, and observation. The next medical follow-up was two months post-
22 injury.

1 IV. INVESTIGATION

2 The Settlement Guardian ad Litem has reviewed documents and
3 records listed below and conducted interviews as follows:

4 3.1. Persons contacted:

- 5 a) Jimmy Gomez, Sr., minor's father;
6 b) Juanita Vasquez, minor's mother;
7 c) Brian Neuharth, family law attorney for minor's mother; and
8 d) Tim D. Wackerbarth and Andrew G. Yates of Lane Powell
9 P.C., attorneys for Defendant Amtrak.

10 3.2. Documents reviewed: Pertinent pleadings, correspondence,
11 reports and photographs, and medical records. The medical records reviewed
12 included the following:

- 13 a) Mary Bridge Children's Hospital records:
14 i. Emergency Department notes dated March 16, 2018;
15 ii. Visit notes from physician Michael J. Tompkins, M.D., dated
16 April 11, 2018; July 11, 2018; and April 18, 2019;
17 iii. Visit notes from neurologist George S. Makari, M.D., dated
18 April 18, 2018, and September 25, 2018;
19 iv. Visit notes from physician Karen Marie Holdner, M.D., dated
20 September 18, 2018;
21 v. Visit notes from ophthalmologist Peter B. Shelley, M.D.,
22 dated June 6, 2019, and August 8, 2019;
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vi. Procedure notes from strabismus surgery from ophthalmologist Peter B. Shelley, M.D., dated July 30-31, 2019; and

vii. Urgent Care visit notes from Cody Wissenbach, PA-C, dated October 22, 2019,

b) Medical articles regarding strabismus.

c) Subrogation billing from Optum.

The undersigned believes that the investigation to date has considered all available information.

V. LIABILITY ISSUES

The investigation revealed no facts suggesting contributory negligence on the part of any person or entity other than the Defendant.

VI. INJURIES, DIAGNOSIS, TREATMENT, AND PROGNOSIS

After they arrived in Tacoma, Jimmy Jr.'s family was homeless and without access to routine medical care. He did not see a medical professional or receive additional medical treatment for the head injury beyond the first aid administered by the ambulance crew until approximately two months later. Medical records since that time note the scarring from the injury, strabismus (or "lazy eye") of his right eye that existed prior to the injury but worsened afterward, persistent and recurring headaches, behavioral changes, and possible post-concussive syndrome. Jimmy Jr. had surgery in July 2019 to help correct the strabismus.

The April 18, 2018, medical record from Dr. Makari clearly states that Jimmy's injury did not cause his strabismus, as he was diagnosed with this

1 condition in Sacramento before he moved to Washington State. Besides this
 2 medical record from Dr. Makai, there are clear references to Jimmy's
 3 prescription glasses and an eye patch to treat the strabismus. Regarding
 4 Jimmy's headaches and behavioral problems, there is no medical basis within
 5 the medical records supporting the conclusion that the accident and resulting
 6 injury from the Amtrak train are to blame for these conditions.

7 I met with Jimmy Jr.'s parents, Jimmy Gomez Sr. and Juanita
 8 Vasquez, on January 7, 2020. They conveyed that Jimmy Jr. still complains
 9 about headaches and that his behavior has changed since the injury—he is
 10 more prone to tantrums and panic/anxiety and has night terrors. Jimmy Jr.
 11 is also afraid to ride on public transportation.

12 I spoke with Jimmy Jr. during the January 7 meeting as well. I asked
 13 him about his headaches, and he pointed to the scar from the injury he
 14 received on the train.

15 VII. DAMAGES

16 7.1. Initial offer from Defendant: \$2,000.00 to Jimmy Gomez Sr.
 17 and \$2,000.00 to Jimmy Gomez Jr.

18 7.2. Counter-offer by Settlement Guardian ad Litem accepted by
 19 Defendant: payment of all medical subrogation, payment of all Settlement
 20 Guardian ad Litem fees and costs, and \$15,000.00 paid to fund an annuity to
 21 be payable to Jimmy Gomez Jr. starting at age eighteen.

22 7.3. Subrogation: \$0.00 Payable by Defendant

23 7.4. Settlement GAL Fees and costs: \$0.00 Payable by Defendant
 24
 25

1 7.5. Net to minor: \$15,000.00 to fund a structured settlement
2 payable to him at age eighteen.

3 VIII. RESOURCES AVAILABLE TO SATISFY THE CLAIM

4 The responsible party is a federally chartered for-profit corporation
5 that has sufficient resources to settle the claims.

6 IX. LIENS, SUBROGATION, AND REIMBURSEMENT CLAIMS

7 The delay in completing this matter is due to the inability to get
8 information from medical providers for subrogation claims. The COVID-19
9 pandemic contributed to the delay.

10 X. IDENTIFICATION OF OTHER CLAIMS, INCLUDING CLAIMS
11 OF OTHER FAMILY MEMBERS

12 Possible loss of consortium claim by minor's father. Minor's mother
13 was absent during the initial injury and for a year thereafter.

14 XI. APPORTIONMENT

15 The Settlement Guardian ad Litem proposes that no funds be
16 apportioned to the parents other than the \$2,000.00 offered to Mr. Gomez by
17 Amtrak in their initial settlement offer and that Jimmy Gomez Jr. receives the
18 full settlement.

19 XII. PROPOSED SETTLEMENT

20 12.1. Sum offered: \$15,000.00

21 12.2. Payment terms and form of settlement: If approved by the
22 court, the net sum to the minor should be \$15,000.00¹ used to purchase an
23

24 ¹ The proposals are attached. The parents have choosen option #3 and the
25 Settlement Guardian ad Litem concers.

1 annuity payable to Jimmy Jr. starting at age eighteen, plus payment of all
2 subrogation expenses and Settlement Guardian ad Litem fees and costs.

3 12.3. Proposed settlement documents: Mother and father of the minor
4 should be authorized to sign any settlement documents on behalf of the
5 minor, if the Court determines the claims are ripe for settlement.

6 XIII. EXPENSES AND FEES

7 The minor was not represented by counsel.

8 XIV. DISPOSITION OF PROCEEDS


9 Annuity quotes were gathered at the outset; however, new quotes had
10 to be requested so they were current. Due to the COVID-19 pandemic, the
11 quotes are less money than originally quoted.

12 XV. SETTLEMENT GUARDIAN AD LITEM'S FEES

13 I request fees and costs in the amount of \$8892.99. My regular hourly
14 rate is \$350.00 per hour.

15 I declare and affirm that I have spent the time listed in the
16 accompanying affidavit in completion of my duties and will spend additional
17 time to complete the case and attend the hearing.

18 DATED this 2 day of Oct, 2020.

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21 ROBIN H. BALSAM, WSBA #14001
22 Settlement Guardian ad Litem for
23 Jimmy Gomez, Jr.
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EXHIBIT "A"
PHOTOGRAPHS OF SEAT AND PEDEL ASSEMBLY

REPORT OF SETTLEMENT GUARDIAN AD
LITEM - 9

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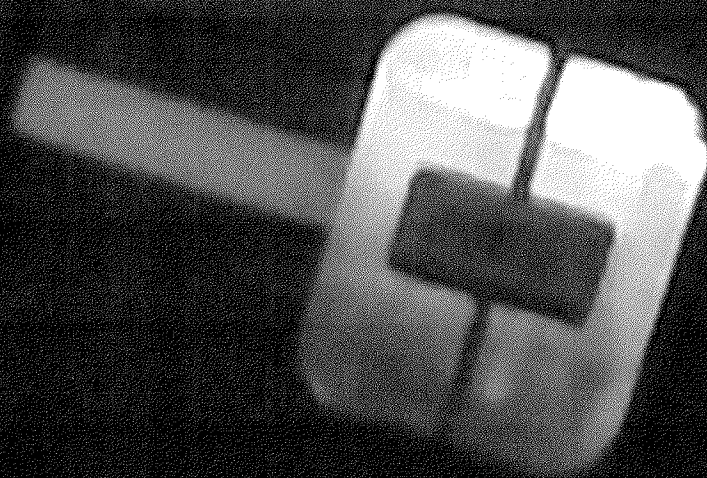


EXHIBIT "B"

OPTUM SUBROGATION BILLING

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REPORT OF SETTLEMENT GUARDIAN AD
LITEM - 10

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ROBIN H. BALSAM P.S.
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www.optum.com

FAX

| | |
|--|---|
| To: Robin Balsam | From: Carol McKissick |
| Fax: 2535720912 | Fax: 800/842-2549 |
| Phone: | Phone: 844/709-6877 |
| Pages (Including Cover): 03 | Wednesday, September 2, 2020 2:46:44 PM Central |
| <p>Comment: Please see the attached letter and the corresponding itemization for the Jimmy Gomez case.</p> <ul style="list-style-type: none"> o If you have any questions, please call 844/709-6877. o This fax may contain personal health information that is confidential and protected by law (45 C.F.R § 164.530(c)). o If you are not the intended recipient, or you are not the employee responsible for delivering the fax to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this fax is strictly prohibited. o If you have received this fax in error, please destroy it immediately and notify our office by faxing this cover sheet along with the first page to 800/842-8810. | |

Unauthorized interception of this facsimile could be a violation of federal and state law. We are required to safeguard privileged, confidential and/or protected health information by applicable law. The information in this document is for the sole use of the person(s) or company named above. If you have received this fax in error, please contact us by phone immediately to arrange for return of the documents.

If you have difficulty with this transmission, please contact the number above.



11000 Optum Circle
MN102-0300
Eden Prairie, MN 55344

September 2, 2020

ROBIN H BALSAM PS ATTORNEYS AT LAW
ROBIN BALSAM
911 SOUTH I STREET
TACOMA, WA 98405

RE: Injured Party: Jimmy C Gomez
Date of Injury: 1/2/2018
Group: Washington Apple Health, #WAHLOP
File #: 43044988

Dear Robin Balsam,

This letter is a follow up to our prior communications. Optum has been retained to pursue a recovery for the medical benefits that have been paid arising out of the above captioned injury.

To date, medical benefits have been paid on behalf of the above referenced injured party(ies) for the treatment of injuries sustained. Enclosed please find a copy of the medical payment summary. The amount of paid benefits may increase. Please contact us prior to settlement to obtain the total amount of paid benefits.

Please advise Optum of the current status of this matter. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Carol Mckissick'.

Carol Mckissick, Analyst
Phone: 844.709.6877 Fax: 800.842.8810
E-mail: Carol.Mckissick@Optum.com

Med Payment Summary

Claimant: GOMEZ, JIMMY C
 Date of Incident: 01/02/2018
 Last Update: 08/24/2020
 File Number: 43044988
 Analyst: Carol McKissick

Please send all payments to:

Optum
 L-3994
 Columbus , OH 43260-3994

Tax ID # 41-1858498

Total Billed: \$377.00
 Total Paid: \$199.03
 Remaining Balance: \$199.03
 Created On: 09/02/2020



| First Date of Service | Claim Number | Provider | Amount Billed | Amount Paid | Paid Date | Capitalated* | Diagnosis Codes | Diagnosis Desc. |
|-----------------------|--------------|-------------------------------|---------------|-------------|------------|--------------|--|--|
| 09/25/2018 | 18M444935900 | GEORGE MAKARI | \$242.00 | \$64.03 | 12/15/2018 | No | R51 , H50.9 , P04.9 | HEADACHE |
| 09/25/2018 | 18M928632000 | MARY BRIDGE CHILD HOSP/HLTH C | \$135.00 | \$135.00 | 12/28/2018 | No | S06.0X9S , S06.0X9S , H50.9 , F80.9 | CONCUSSION WITH LOSS OF CONSCIOUSNESS OF UNSPECIFIED DURATION, SEQUELA |
| Subtotals: | | | \$377.00 | \$199.03 | | | | |

EXHIBIT "C"

STRUCTURED SETTLEMENT OPTIONS FOR JIMMY GOMEZ, JR.

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REPORT OF SETTLEMENT GUARDIAN AD
LITEM - 11

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ROBIN H. BALSAM P.S.
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Tacoma, Washington 98405
(253) 627-7800 / Fax (253) 572-0912

OBJECTIVE SETTLEMENT ADVISORS

RINGLER

Everybody Wins



253-925-1660 (phone)

253-925-1662 (fax)

**Structured Settlement Options
For
Jimmy Gomez**

For Questions or Additional Quotes

Please contact
Tony Robinson
Settlement Advisor at Ringler
aaarobinson@ringlerassociates.com
800-344-7452

OBJECTIVE SETTLEMENT ADVISORS

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253-925-1660 (phone)
253-925-1662 (fax)

An Executive Summary about Structured Settlements

A Structured Settlements is an investment option available only to individuals and families who are in the process of settling an injury claim or lawsuit. In fact, they are the only financial product specifically designed for people who have been injured and their families. A structured settlement offers a superior combination of security and guaranteed income. Consider the following:

STRUCTURED SETTLEMENTS MEET YOUR INDIVIDUAL NEEDS

Structured Settlements are designed to provide you with the funds you need, when you need them. The payments can be made in any amount and at any time that best meets your specific needs. Your plan can include payments for life or only for a specific period of time. Cost of living increases can be added to off-set the effect of inflation. Lump sum payments can be included to provide you the capital needed for larger purchases or simply to replenish your savings or investment accounts.

STRUCTURED SETTLEMENTS ARE GUARANTEED

Structured Settlement payments are not subject to the fluctuations that affect stocks, bonds and mutual funds. The payments you choose today will be made as shown regardless of the ups and downs of the broader financial markets. The cyclical nature of these markets often erodes expected returns, particularly when the investor has ongoing income needs and regularly has to make withdrawals during a down cycle.

STRUCTURED SETTLEMENTS ARE 100% INCOME TAX-FREE

Section 104(a)(2) of the Internal Revenue Code states that money received as a result of a personal physical injury settlement are exempt from gross income.

STRUCTURED SETTLEMENTS HAVE NO ONGOING FEES OR CHARGES

Simply put, what you see on the proposal is what you get. There are no ongoing fees, charges, taxes, etc. to reduce from the amount of the future payments.

STRUCTURED SETTLEMENTS PROVIDE SPENDTHRIFT PROTECTION

Because the payments cannot be accelerated or "cashed in" the funds cannot be spent prematurely. By designing the payments to meet specific needs, the money is available when you need it. No other investment alternative can provide this level of protection on a tax-free basis.

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253-925-1660 (phone)

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Individually Designed Settlement for Jimmy Gomez**Option 1**

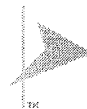
| <u>BENEFIT</u> | <u>COST</u> | <u>GUARANTEED YIELD</u> |
|---|--------------------|------------------------------------|
| <u>Jimmy Gomez</u> | | |
| Male, Date of Birth: 08/15/14 | | |
| <u>Monthly Income – 5 Years</u> | | |
| \$330.70 per month guaranteed 5 years starting at Age 18 on 08/15/2032. | | \$19,842.00 |
| TOTALS | \$15,000.00 | \$19,842.00 |

*Internal Rate of Return = 1.98%**Taxable Equivalent Yield = 2.75%**Rate Series = USAA150 (08/17/2020)**Proposal Preparation Date: 08/28/2020**Proposal Purchase Date: 10/16/2020**This proposal is valid for 7 days from the proposal preparation date.**This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.**Please refer to our disclosure/disclaimer statement at <http://ringlerassociates.com/disclosures>.*

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253-925-1662 (fax)

Individually Designed Settlement for Jimmy Gomez**Option 2**

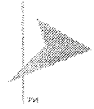
| <u>BENEFIT</u> | <u>COST</u> | <u>GUARANTEED YIELD</u> |
|---|--------------------|------------------------------------|
| <u>Jimmy Gomez</u> | | |
| Male, Date of Birth: 08/15/14 | | |
| <u>Annual Income – 5 Years</u> | | |
| \$3,870.12 per year guaranteed 5 years starting at Age 18 on 08/15/2032. | | \$19,350.60 |
| TOTALS | \$15,000.00 | \$19,350.60 |

*Internal Rate of Return = 1.86%**Taxable Equivalent Yield = 2.58%**Rate Series = USAA150 (08/17/2020)**Proposal Preparation Date: 08/28/2020**Proposal Purchase Date: 10/16/2020**This proposal is valid for 7 days from the proposal preparation date.**This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.**Please refer to our disclosure/disclaimer statement at <http://ringlerassociates.com/disclosures>.*

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Individually Designed Settlement for Jimmy Gomez**Option 3**

| <u>BENEFIT</u> | <u>COST</u> | <u>GUARANTEED YIELD</u> |
|--|--------------------|------------------------------------|
| <u>Jimmy Gomez</u> | | |
| Male, Date of Birth: 08/15/14 | | |
| <u>Lump Sums</u> | | |
| \$2,000.00 guaranteed, payable at Age 18 on 08/15/2032. | | \$2,000.00 |
| \$3,000.00 guaranteed, payable at Age 20 on 08/15/2034. | | \$3,000.00 |
| \$15,361.00 guaranteed, payable at Age 22 on 08/15/2036. | | \$15,361.00 |
| TOTALS | \$15,000.00 | \$20,361.00 |

*Internal Rate of Return = 2.04%**Taxable Equivalent Yield = 2.83%**Rate Series = USAA150 (08/17/2020)**Proposal Preparation Date: 08/28/2020**Proposal Purchase Date: 10/16/2020**This proposal is valid for 7 days from the proposal preparation date.**This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.**Please refer to our disclosure/disclaimer statement at <http://ringlerassociates.com/disclosures>.*

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Individually Designed Settlement for Jimmy Gomez**Option 4**

| <u>BENEFIT</u> | <u>COST</u> | <u>GUARANTEED YIELD</u> |
|--|--------------------|------------------------------------|
| <u>Jimmy Gomez</u> | | |
| Male, Date of Birth: 08/15/14 | | |
| <u>Lump Sums</u> | | |
| \$20,308.00 guaranteed, payable at Age 21 on 08/15/2035. | | \$20,308.00 |
| TOTALS | \$15,000.00 | \$20,308.00 |

*Internal Rate of Return = 2.06%**Taxable Equivalent Yield = 2.86%**Rate Series = USAA150 (08/17/2020)**Proposal Preparation Date: 08/28/2020**Proposal Purchase Date: 10/16/2020**This proposal is valid for 7 days from the proposal preparation date.**This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.**Please refer to our disclosure/disclaimer statement at <http://ringlerassociates.com/disclosures>.*

DECLARATION OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

| | |
|--|---|
| Tim D. Wackerbarth <u>wackerbartht@lanepowell.com</u> Andrew G. Yates <u>yatesa@lanepowell.com</u> Lane Powell PC 1420 Fifth Avenue, Suite 4200 Seattle, WA 98111-9402 | <input checked="" type="checkbox"/> Emailed <input checked="" type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____ |
| Jimmy Gomez, Sr. 7909 Pacific Hwy East #6 Milton, WA 98354 <u>Jgegmg.jg@gmail.com</u> | <input checked="" type="checkbox"/> Emailed <input type="checkbox"/> ABC Legal Messenger <input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____ |
| Juanita Vasquez 6611 Lakewood Dr W #13 University Place WA 98467 <u>juanitachris1234@gmail.com</u> | <input checked="" type="checkbox"/> Emailed <input type="checkbox"/> ABC Legal Messenger <input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____ |

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, this 2nd day of October, 2020.


 Amylyn Riedling, Declarant